Legislative & Policy Update

NW Portland Area Indian Health Board
Quarterly Board Meeting
Hosted by the Colville Confederated Tribes
August 9, 2016

Report Overview

1. Status of FY 2017 IHS Budget
2. Contract Support Costs
3. Community Health Aide Program (CHAP) Expansion
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5. Catastrophic Health Emergency Fund
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Status of FY 2017 IHS Budget

• Congress will likely enact a continuing resolution for FY 2017 in September to fund IHS and other federal agencies.
• Senate and House Committees’ Interior, Environment and Related Agencies appropriation bills reflect differences (detailed on next slide)
• Committee reports
  – Senate requests GAO report on Advance Appropriations
  – House questions the distribution of population growth funds; and directs IHS to provide a report on full funding for HCIA
  – Concurrence on CSC, CSC for domestic violence, zero suicide initiative; and volunteer dentists/credentialing
### Status of FY 2017 IHS Budget

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### Contract Support Costs

- President’s FY 2017 IHS budget proposes an increase of $82m above FY 2016 level for Contract Support Costs (CSC).
- Senate and House Committees’ Interior, Environment and Related Agencies bills continue the FY 2016 enacted policy of appropriating an indefinite amount ("such sums as may be necessary") to separate accounts for IHS and BIA.
  - Not classified as mandatory yet.
- CSC Policy - Several recommended changes to the CSC Policy were made following the March 28-29 CSC Workgroup meeting.
- Dear Tribal Leader sent out on 4/11/16 providing a 60-day comment period on the revised policy and three tribal consultations were held.
- Final draft policy will be reviewed by the CSC workgroup in September (15-16 in DC).

### CHAP Expansion

- On June 1, 2016, IHS issued a DTLL to create a National Indian Health Service Community Health Aide (CHA) Program.
- The goal is to fully utilize CHAs within the Indian health system.
- Telephone consultation on October 4 at 12 noon PST.
- Two in person consultations:
  - NIHB Annual Consumer Conference on September 19 in Scottsdale; and
  - NCAI Annual Convention on October 9 in Phoenix.
- Comments are due on October 27 (extended from July 29, 2016).
Tribal Premium Sponsorship

- On July 18th, IHS issued a DTLL on a new, draft circular to address the purchase of health insurance by tribes, tribal organizations and urban Indian organizations under Section 402 of IHCIA.
- Provides guidance on when T/TO can purchase health insurance coverage for IHS beneficiaries using–in part or in whole ISDEAA funding or other IHS appropriated funding.
- One telephonic consultation held; two in person scheduled:
  - NIHB Annual Consumer Conference on September 19 in Scottsdale; and
  - NCAI Annual Convention on October 9 in Phoenix.
- Comments due on October 31.

Catastrophic Health Emergency Fund (CHEF)

  - Adds “tribal” resources to the list of alternate resources.
- No Tribal consultation on this rule before it was issued.
- DTLL issued on June 1, 2016 stating that IHS would engage in additional Tribal consultation.
- DTLL issued on July 29, 2016 with Tribal consultations set, as follows:
  - Telephone consultations on August 16 and October 24
  - In person consultations at NIHB ACC on September 19 in Scottsdale, and NCAI Annual Convention on October 9 in Phoenix.

Medicare-Like Rates (MLR) to Non-Hospital Providers

- Extends MLR to physicians and other health care professional services and non-hospital based services (non-hospital providers).
- Applies to IHS-operated PRC programs and urban Indian health programs; and only to Tribes/Tribal organizations if they opt-in.
- Rule effect on May 20, 2016 but comments were accepted up to this date.
- The Board submitted comments on the definition of “referral” and on opt-in method.
100% FMAP Update

- On February 26, 2016, CMS issued a letter to State Health Officials re-interpreting the scope of services to be considered “received through” an I/T to qualify for 100% FMAP:
  1. “Received through” now includes any services that an I/T is authorized to provide according to IHS rules, and that are also covered under the approved Medicaid state plan, including long-term services and supports (LTSS).
  2. May also include transportation (emergency and non-emergency) and other related travel expenses if it is a covered service under the Medicaid state plan.
  3. I/T’s request for service from a non-I/T provider must be in accordance with a “care coordination agreement” and non-I/T provider must be a Medicaid provider.
  4. Two billing options presented: (a) non-I/T provider bills Medicaid directly; or (b) I/T handles all billing.
  5. Effective upon execution of a written care coordination agreement.
- CMS to issue a FAQ on new policy – still pending.

Other Policies

- 6/9/16 - IHS DTLL on FY 2016 $10m increase for Gen I Initiative Support
- 6/15/16 & 7/20/16 - IHS DTLL requesting Tribal Consultation on the draft Quality Framework policy for Direct Service Tribes.
  - Telephone consultation on 8/15/16 at 11 am PST
  - In person consultations at the Great Plains Tribal Chairman’s Health Board Summit on August 30, and NIHB Annual Consumer Conference on September 19
  - Written comments due in 60 days
- 7/22/16 – IHS DTLL on SDPI FY 2016 Community-Directed grant application process

STAC Meeting Update

- Last meeting was June 7-8; next meeting is September 13-14
- Tribal leaders made several requests to Secretary Burwell, including:
  - Transition planning for STAC
  - A National Tribal Behavioral Health Summit
  - Work with White House Council on Native Americans to create a Tribal Action Plan
  - Provide information on Opioid abuse and addiction for Indian country
  - Tribal consultations related to CHAP expansion
MMPC & CMS TTAG Update

- Medicare, Medicaid and Health Reform Policy Committee (MMPC) conference call on May 4, retreat on June 13-14, 2016, and face-to-face meeting on July 26
- At retreat:
  - Developed action items
  - Identified priority areas
- CMS TTAG conference call on June 8 and face-to-face meeting July 27-29 in DC
  - CMS and IHS representatives provided updates to tribal leaders

Litigation Impacting Indian Health

- Section 2901(b) – Payer of Last Report
  - Redding Rancheria v. Burwell, No. 15-152 (DDC)
  - IHS has argued in this litigation that Section 2901(b) of the Affordable Care Act (ACA), enacted in 2010, invalidated the IHS’s longstanding policy exempting tribal self-insured health plans from the payer of last resort rule.
- Section 105(l) under ISDEAA – Lease Compensation
  - Maniilaq Association v. Burwell, No. 14-2035 (RMC)
  - Court held that IHS should negotiate proper lease compensation under 105(l) of the ISDEAA.
  - On July 27, Judge issued a Final Order.

Indian Legislative Issues 114th Congress

- The Comprehensive Addiction and Recovery Act of 2016 (S. 524)
- The Indian Health Service Accountability Act of 2016 (S. 2953)
- The Helping Ensure Accountability, Leadership and Trust in Tribal Healthcare Act (H.R. 5406)
- Department of Interior Tribal Self-Governance Act of 2015 [S. 286]
- Advance Appropriations (H.R. 395)
- Tribal Programs Exemption from Sequestration (S. 1497/H.R. 3063)
- Employer Mandate (S. 1771/H.R. 3080)
- Family Stability and Family Kinship Act of 2015 (S. 1964)
- Native American Suicide Prevention Act of 2015 (H.R. 3166)
- Ongoing:
  - HCA Technical Amendments (S. 2114)
  - SDPI Permanent Reauthorization
  - Contract Support Costs mandatory funding and reconciliation language
Indian Legislative Bills in 114th Congress

• S. 524 – The Comprehensive Addiction and Recovery Act of 2016 (CARA)
  – Signed into law by President Obama on July 22, 2016.
  – Addresses various issues through prevention and treatment of opioid abuse.
  – The House and Senate disagreed about funding.
  – No funds appropriated for emergency mandatory funding to address the opioid crisis.
  – Contains several competitive grant programs that tribes would be eligible for but there is no tribal-specific allocation of funds.
• House ($500m) and Senate ($261m) appropriation bills recommended discretionary opioid funding.

Indian Legislative Bills in 114th Congress

• S. 2953 – The Indian Health Service Accountability Act of 2016
  – Introduced by Sen. Barrasso (R-WY) and Sen. John Thune (R-SD). The Act will improve transparency and accountability at the IHS by:
    • Expanding removal and discipline authorities for problem employees at the agency;
    • Providing the Secretary of HHS with direct hiring and other authorities to avoid long delays in the hiring process;
    • Requiring Tribal consultation prior to hiring area directors, hospital CEOs and other key leadership positions;
    • Commissioning GAO reports on staffing and professional housing needs;
    • Improving protections for employees who report violations of patient safety requirements;
    • Mandating that the Secretary of HHS provide timely IHS spending reports to Congress; and
  – Ensuring the Inspector General of HHS investigates all patient deaths in which the IHS is alleged to be involved
  – Referred to Senate Committee on Indian Affairs on 5/19/16.

Indian Legislative Bills in 114th Congress

• S. 5406 – The Helping Ensure Accountability, Leadership and Trust in Tribal Healthcare Act
  – Introduced by Sen. Kristi Noem (R-SD) on 6/8/16; co-sponsors include Senators Ashford (D-NE), Smith (R-NE), Fortenberry (R-NE), Cramer (R-ND), McCollum (D-MN), and Cole (R-OK).
  – Addresses issues similar to S. 2953 on hiring, removal and demotion but also focuses on more substantive reforms including a long-term contracting pilot program and reforms on the PRC funding formula.
  – Referred to House Committees on Natural Resources, Energy and Commerce, and Ways and Means on 6/8/16; and to House Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs on 6/13/16.
  – Subcommittee hearing held on 7/12/16.
Indian Legislative Bills in 114th Congress

• S. 286 – Department of Interior Tribal Self-Governance Act of 2015
  – Introduced by Sen. John Barrasso (R-WY) on 1/28/15; co-sponsors include Senators Tester (D-MT), Murkowski (R-AK), Crapo (R-ID), Schatz (D-HI), Franken (D-MN)
  – Amends Title IV of ISDEAA to make it consistent with Title VI, the Self-Governance Program for HHS
  – Creates the same administrative efficiencies for DOI that have been in place for HHS programs.
  – S. 286 passed Senate on 7/7/15 by Unanimous Consent with an amendment
  – Referred to House Natural Resources Subcommittee On Indian, Insular and Alaska Native Affairs on 8/4/15

Indian Legislative Bills in 114th Congress

• H.R. 395 – Indian Health Service Advance Appropriations Act of 2015
  – Introduced by Rep. Young (R-AK) on 1/14/15; co-sponsors include Senators Kirkpatrick (D-AZ), Huffman (D-CA), Lujan (D-NM)
  – Amends IHCIA to authorize Advance Appropriations for the Indian Health Service and Indian Health Service Facility Accounts
  – Referred to House Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs on 3/2/15

Indian Legislative Bills in 114th Congress

• Senate and House Bills Exempting Tribal Programs From Sequestration
  • S. 1497
    – Introduced by Sen. Tester (D-MT) and Sen. Udall (D-NM) on 6/3/15
    – S. 1497 would exempt IHS, BIA, HUD and other Indian programs from sequestration required under the Budget Control Act of 2011
  • H.R. 3063
    – Companion bill to S. 1497
    – Introduced by Rep. Young (R-AK) on 7/14/15; co-sponsors include Representatives Grisham (D-NM), Cole (R-OK), Ruiz (D-CA), McCollum (D-MN)
  • Both bills referred to Budget Committees
Indian Legislative Bills in 114th Congress

- Senate and House Bills Exempting Tribes from the ACA Employer Shared Responsibility Mandate
  - S. 1771-Tribal Employment and Jobs Protection Act introduced by Sen. Daines (R-MT) on 7/15/15; co-sponsors Senators Thune (R-SD), Crapo (R-ID), Rounds (R-SD), McCain (R-AZ), Risch (R-ID)
  - H.R. 3080 introduced by Rep. Noem (R-SD) on 7/15/15; 27 bi-partisan co-sponsors
  - Senate bill referred to Finance; House bill reported favorably out of House Ways and Mean on 6/15/16.

Indian Legislative Bills in 114th Congress

  - Introduced by Sen. Wyden (D-OR) on 8/5/15; co-sponsors Sen. Bennett, Brown (D-OH), Cantwell (D-WA), Casey (D-PA), Gillibrand (D-NY), Menendez (D-NJ), Schumer (D-NY), Stabenow (D-MI), Warner (D-VA)
  - Reforms the federal finance system supporting state and child welfare services
  - Funds preventive services and kinship placements for children at risk of foster placement
  - Current law creates incentives to place Indian children outside of families in order to receive federal funding
  - Encourages child welfare system to forego alternatives to prevent breakup of families like parent training, mental health counseling, trauma recovery, etc.
  - Referred to Finance Committee on 8/5/15

Indian Legislative Bills in 114th Congress

- H.R. 3166 Native American Suicide Prevention Act of 2015
  - Introduced by Rep. Grijalva (D-AZ) on 7/22/15; co-sponsors are Reps. Ruiz (D-CA), Huffman (D-CA), Young (R-AK), Moore (D-WI), McCollum (D-MN), Grisham (D-NM), Salmon (R-AZ), Napolitano (D-CA) and Cole (R-OK)
  - Amends the Public Health Service Act to require a state or state-designed entity to seek Tribal consultation as a condition of receiving a grant or cooperative agreement for development/implementation of a statewide youth suicide and early intervention and prevention strategy.
  - Referred to Energy & Commerce, Subcommittee on Health on 7/24/15.
Discussion?